

Referred Case.

Lakshuman Sakharm...	Plaintiff.
Ranu bin Sidoji et al...	Defendants.

1869
March 9.

Calculation of time for performance of contract—Exclusion of date on which contract is made—Limitation—Act XIV. of 1859.

The date on which a contract is made is to be excluded in computing the time allowed for its performance.

The date on which a debt becomes payable is to be excluded in calculating the period of limitation.

Case submitted for the orders of the High Court, by Bhaskar Damodhar, Acting Judge of the Court of Small Causes at Pana, under Act X. of 1867 :—

“The abovenamed plaintiff presented a plaint to this Court, on the 17th December 1868, for the recovery of Rs. 30-0-0, being the amount of principal and interest due on a bond dated Margashirsha Vadya 14th, Shake 1786, corresponding with the 27th of December 1864. The plaint has not yet been registered, a doubt having arisen as to whether or not it was presented within the period allowed by the Limitation Act (No. XIV. of 1859).

“The time agreed upon for the payment of the debt is given in the bond as one year ; the Marathi words used being, ‘*Yasi mudat ek varshni vyaj mudal suddha jadsha karun devu.*’ The doubt is whether the debt became payable on Margashirsha Vadya 13th, Shake 1787, corresponding with the 16th of December 1865, or on Margashirsha Vadya 14th, corresponding with the 17th of December 1856, and whether or not the 17th of December 1868, on which day the plaint was presented to the Court, fell within the period of three years, allowed by cl. 9 of sec. 1. of Act XIV. of 1859. The solution of this doubt depends on the following questions which I have the honour to submit for the decision of the High Court under Act X. of 1867 :—

“1. When the time fixed for the performance of a contract is stated to be a certain number of years, months, or days, without specifying whether the date on which the

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contract is made is to be included or excluded from the computation, should the period allowed for the performance of the contract be held to commence from the date thereof so as to include it, or from the day next following.

"2. In calculating the period of limitation allowed by sec. 1, cl. 9 of Act XIV. of 1859, should the period be computed from and inclusive of the day on which the debt became due, or from the day next following ?

"I am respectfully of opinion that, except when the contrary is specified by the terms of the contract, the date on which a contract is made should be excluded in computing the period allowed for its performance. I am also of opinion that the day, on which a debt becomes payable, should be excluded in calculating the period of limitation under Act XIV. of 1859.

"At page 390 of 'Wharton's Law Lexicon' (3rd Edition) it is stated that '*From*' excludes the day from which the time is to be reckoned.' Sec. 38 of the proposed Contract Law for India provides that when an engagement is to be performed on a certain day without application, the person entering into the engagement has the whole of that day to perform the engagement in. With respect to Promissory Notes, Bills of Exchange and Cheques, the Indian Negotiable Instruments' Bill (published in a Supplement to the Government Gazette of 3rd October 1867) contains the following provisions :—

'A Promissory Note, Bill of Exchange, or Cheque made payable after the lapse of a stated number of months, is mature on the day of the month of payment which corresponds in number with the day when the instrument, if payable after date, is dated; or when, if payable after sight, it is presented. If the month of payment contains no corresponding day, the instrument is mature on the last day of such month.

'When a Promissory note, Bill of Exchange or Cheque is made payable a stated number of days after sight, or after date, or after any other epoch, in estimating the number of

days, the first day is the day immediately following the day when the instrument payable after sight has been first presented for acceptance, or when the instrument payable after date is dated.

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'Exception.—Where the day, when the instrument arrives at maturity is not a day for the despatch of public business, the instrument is due on the next succeeding day of public business.'

"The words, 'from or after this date,' are not used in the bond to which this reference relates; but it is evident from the context that the words, '*ek varshani*,' were intended to mean a year from the date of the bond. I consider, therefore, that as the bond is dated Margashirsha Vadya 14th, Shake 1786, the debt became payable on Margashirsha Vadya 14th, Shake 1787, corresponding with the 17th of December 1865, excluding the date of the bond in computing the year allowed for payment.

"I also consider that the debtor had the whole of the 17th of December 1865, for paying the debt, and that the three years allowed by sec. 1. cl. 9 of Act XIV. of 1859 must be calculated so as to exclude that day. If this view be correct, the 17th of December 1868, was the last day of the three years allowed by Limitation Act and the plaintiff's suit is not barred."

PER CURIAM (COUCH, C. J. and WARDEN, J.):—The Court is of opinion that the date on which the contract was made should be excluded in computing the time allowed for its performance, and the day, on which the debt became payable, should be excluded in calculating the period of limitation, under Act XIV. of 1859.